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10/736,435

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Janet L. Schorr

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EXAMINER

AMINI, JAVID A

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* JANET L. SCHORR, BRENT GILBERT and MARK  
FREDERICK IVERSON

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Application No. 10/736,435  
Technology Center 2600

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Mailed: June 29, 2009

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Before DALE M. SHAW *Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 24, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention.

### APPEAL BRIEF: APPEALED CLAIMS

Appellants have not appealed all rejected claims. Specifically, a review of the grounds of rejection on the record finds that rejections are outstanding for the following pending claims: 23-44. The rejected claims that have not been appealed and/or argued for appeal are claims 25, 28, 30, 31, 32, 33, 34, 36, 37, 38, 40, 42 and 43.

### DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8<sup>th</sup> ed. Rev. 7, Sept 2008).

### CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- (1) enter a paper canceling claims 25, 28, 30, 31, 32, 33, 34, 36, 37, 38, 40, 42 and 43;
- (2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims; and
- (3) for such further action as may be appropriate.

Application No. 10/736,435

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

dms/bim

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